IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL RESTORATION No. 27 of 2006

SMT. PRATIMA DATTA
V/S
PRABHUDAYAL & ORS

Mr. RAMESH PANWAR for Mr. RAJESH PANWAR, for the appellant / petitioner

Date of Order : 1.6.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

The appeal was dismissed by virtue of the peremptory order dt. 26.4.2005. The appeal was filed on 6.9.2004, against the award of Motor Accident Claims Tribunal, awarding the compensation. According to language of Section 173 of the M.V. Act, the appeal is required to be accompanied by the certificate, about deposit of the amount mentioned therein, but then the appeal was filed without such certificate.

It is in these circumstances, that when the matter was listed in the Court, after more then seven months, on 26.4.2005, instead of dismissing the appeal straightway on that day, bearing benevolence, six weeks' further time was granted to file the certificate, and the order was made peremptory. Notwithstanding that, the

certificate had not been filed, and the peremptory order came into action.

The only ground given in the application for restoration is, that due to poor financial condition, the appellant could not arrange the requisite amount. It is required to be grasped, that in the unfortunate accident, the victim sustained serious injuries, inasmuch as even according to the finding of the learned Tribunal, part of the ear was cut, the victim had lacerated wounds on the right hand, multiple abrasion on the right temporal region also, and had suffered 50% permanent disability.

The provisions of section 173 has a definite objective, being that in the event of the award being challenged in appeal, the victim / the claimants should not be left high and dry, simply because the defendant chooses to have the luxury of filing appeal against the award, and thereby put aside the claimant, and therefore, the right to file appeal has been made conditional. Notwithstanding all this oblivion of the needs of the claimants, doing one side justice the petitioner had already been shown benevolence, but the petitioner did not take advantage thereof. In such circumstances, the appellant cannot be allowed any premium by restoring the appeal.

The restoration application thus being devoid of

merit, is dismissed.

(N P GUPTA),J.

/Sushil/